

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: Mwendha, Tibatemwa-Ekirikubinza, Tuhaise, Musota, Madrama, JJ.SC

CIVIL APPEAL NO. 0005 OF 2023

ATTORNEY GENERAL.....APPELLANT

VERSUS

HENLEY PROPERTY DEVELOPERS LTD.....RESPONDENT

(An appeal arising from the judgment and decision of the Court of Appeal Civil Appeal No. 0421 of 2021 at Kampala, before Musoke, Gashirabake, Luswata, JJA dated 09<sup>th</sup> January 2023)

JUDGMENT OF MWONDHA, JSC

This is a second appeal, the appellant was dissatisfied with the judgment, decision and orders of the learned Justices of the Court of Appeal and appealed to this court on the following grounds: -

1. The learned Justices of the Court of Appeal erred in law and fact in failing to evaluate the evidence on Court record in holding that the Respondent had good title.
2. The learned Justices of the Court of Appeal erred in law and fact in holding that the Respondent was a bona fide purchaser for valuable consideration without notice.
3. The learned Justices of the Court of Appeal erred in law and fact in finding that the Respondent was entitled to the award Ugsh 50,000,000,000/= (Fifty Billion Shillings) as fair valuation of the suit land which was manifestly high and excessive.
4. The learned Justices of the Court of Appeal erred in law and fact when they used his discretion unjudicially and upheld 15% p.a interest rate from date of filing the suit until payment in full which was manifestly high and excessive.

The Appellant prayed that this Court: -

- a) Allows the appeal.
- b) The costs of this appeal be provided for.

## Background

The background of this appeal as accepted by the Court of Appeal is that the Respondent instituted a suit in the trial Court seeking for compensation from the Appellant due to acts of his agent, the Registrar at Mukono Land Offices, that had led it to suffer financial loss, that is loss of purchase price for the suit land it had paid to the vendors, Nantume Flomera Nakalema and Nabunjo Manjeri Kiwanuka, only to subsequently discover that the suit land belonged to another person and not the vendor.

The Respondent claimed that in October, 2011, it had expressed interested in buying certain land in Mukono District Registered as East Buganda Block 171 Plot 6 at Namasaga, measuring 123.83 hectares. It had met with one Nantume Flomera Nakalema who had assured it that she was the owner of that land, as administrator of the Estate of the late Kiwanuka Samuel Kaliginya, who owned the land prior to his death. The Respondent severally requested for searches at the Mukono District Land Office, and was given search reports that confirmed that Nantume Flomera Nakalema was the owner of the said land. On the basis of the search reports, the Respondent, on 12<sup>th</sup> November, 2011, concluded a land sale agreement wherein he agreed to purchase the land for Ugx 6,097,200,000/= (Uganda Shillings Six Billion Ninety, Seven Million Two Hundred Thousand only) from the said vendor.

Subsequently, Nantume Flomera transferred the suit land to one Nabunjo Manjeri Kiwanuka and the parties executed an addendum to reflect that fact. The Respondent subsequently got registered as the owner of the land on 8<sup>th</sup> May, 2013.

In 2016, three years after the Respondent was Registered as owner of the land, it received notification from the Commissioner Land Registration (CLR) of her intention to cancel its certificate of title on grounds that it had been issued in error. The CLR said that, upon conducting routine inspection of the Register, it had been discovered that the land was part of a bigger piece of land covered in a certificate of title issued earlier, namely, Buganda, Mengo, Kyagwe Freehold Register Volume 64 Folio 18 known as Kasenso Estate, measuring 882.39 acres, belonging to the Sugar Corporation of Uganda Limited (SCOUL). On 5<sup>th</sup> September, 2016, the CLR cancelled the Respondent's title.

The Respondent was aggrieved with the cancellation of its title and sued the Appellant for the acts of its agent, the CLR, the custodians of the Register, in creating and cancelling its title had led to loss of monies it had paid to the vendors. The Respondent claimed that it had relied upon the search information obtained from the CLR as well as the information

on the Register which showed that the vendors were the owners of the land. The Respondent averred that it had suffered loss and sought damages for the same.

The Appellant filed a written statement of defence to oppose the Respondent's suit. The Appellant claimed that the Respondent's title was fraudulently created given that the same was issued for land which was covered in an already existing certificate of title belonging to SCOUL. The Appellant denied liability and averred that the Respondent ought to have sought a refund of the money from the vendors Nantume Flomera Nakalema and Nabunjo Manjeri Kiwanuka who had sold non-existent land. The Appellant further averred that the Respondent should have done a physical search on the suit land as that would have helped them discover that the land was already owned by SCOUL. The Appellant averred that the CLR proceeded correctly when she cancelled the Respondent's title as the same was granted in error.

The learned trial Judge after hearing the evidence, found in favour of the Respondent. He found that the Respondent had not acted fraudulently in the process leading to the Respondent being registered as the proprietor of the land. He also found that the Respondent was a bona fide purchaser of the land from the vendors, Nantume Flomera and Nabunjo Kiwanuka, without notice of SCOUL's interest in the suit land. He found that the Respondent had exercised sufficient due diligence by obtaining a search report from Mukono District Land Office, prior to purchasing the land from the vendors. The learned trial Judge also found that the responsible officers at the Mukono Land District Office had erroneously created, maintained and issued the certificate of title which the Respondent had subsequently owned. He observed that the Respondent, as a registered proprietor had assurance, based on the principle that the information on the Register is correct, and that because the information on the Register turned out to be incorrect, the Appellant was liable. On appeal by the Appellant, the Court of Appeal Justices found no merit in the appeal, upheld the trial Court's decision and orders and dismissed the appeal with costs. The Appellant was dissatisfied with the judgment and decision of the Court of Appeal hence this appeal.


### **Representation.**

At the hearing of the appeal, the appellant was represented by Commissioner Civil Litigation Mr. George Kalemera and Mr. Mark Muwonge, State Attorney while the Respondent was represented by Mr. Enoth Mugabi.

### **Appellant's submissions.**

#### **Ground 1.**

Counsel for the Appellant submitted that the learned Justices of the Court of Appeal erred in law and fact in failing to evaluate the evidence on court record and held that the Respondent had good title. Counsel submitted that the Respondent was aware of that there was a third party in possession of the suit land before its purchase. That the addendum at page 379 paragraph 4.1(a) and (b) of the Record of Appeal proved that the Respondent had knowledge that the suit land was in possession of SCOUL but not the vendors (Nantume Flomera Nakalema and Nabunjo Manjeri Kiwanuka).

Counsel submitted that the 1995 Constitution of Uganda recognizes customary land tenure as one of the land tenures in Uganda and as such a customary land interest is as good as a certificate of title. That it was the duty of the Respondent to verify the authenticity of SCOUL's rights prior to purchasing the suit land. Counsel argued that according to the evidence on record, the suit land comprised in FRV 64 Folio 18 at Kasensa formerly Registered in the names of Kivulu (Uganda) Rubber Company on 22<sup>nd</sup> December 1947 was subsequently Registered in the names of Sugar Corporation Uganda Limited on the 28<sup>th</sup> November 2007 as per the certificate of title at page 288-289 of the Record of Appeal. 

Counsel submitted that it was an error in law and fact on part of the Court of Appeal Justices to find on page 157 paragraph 2 of the Record of Appeal that, the vendor Nantume Flomera Nakalema as administrator of the estate only had a duty to check the land office to verify the authenticity of her title and that the land was available to be sold to the Respondent. Counsel argued that this finding shifted the burden of carrying out due diligence to the Commissioner Land Registration whose duty is to keep the Register but has no obligation to investigate and interrogate circumstances on ground like the location on land among others before its purchase.

Counsel further submitted that the Court of Appeal finding creates an overarching burden on the office of Commissioner Land Registration and a very serious financial strain on the consolidated fund because Government will be held responsible for titles created out of misrepresentation of fact yet the land act grants powers the Commissioner to cancel titles once an error on the Register is realized as was found by this court in **Hilda Wilson Namusoke & 3 Others v. Owalla's Home Investment Trust E.A Limited, SCCA No. 15 of 2017.**

Counsel submitted that the Commissioner Land Registration was justified to cancel the Respondent's certificate of title for having been issued in error given the fact that there was already an existing title by SCOUL. Counsel relied on the case of **Citizens Concern Africa v Attorney General, Constitutional Petition No. 3 of 2019**, where the Constitutional Court held that, "a certificate of title issued illegally cannot be said to be evidence of any

interest in the land and does not confer ownership of land onto the holder. It is a complete nullity and could never become the root of a title to subsequent transferees. Thus the protective cloak of indefeasibility does not arise. It is only in circumstances where the registered proprietor has acquired the land lawfully that the title is indefeasible and conclusive evidence of ownership". Counsel therefore submitted that the Court of Appeal Justices erred in law and fact when they decided that the Respondent's title comprised in Block 171 Plot 6 was unlawfully cancelled as they had no duty to investigate its authenticity save for carrying out a search in the land registry.

## **Ground 2.**

Counsel submitted that the learned Justices of the Court of Appeal erred in law and fact when they found that the Respondent was a bona fide purchaser for value without notice. Counsel submitted that the Court of Appeal Justices failed to evaluate the evidence on record that, the vendor and the Respondent were aware that there were squatters and that SCOUL was in possession of the suit land. Counsel argued that clause 4.1(a) and (b) of the addendum on page 379 of the Record of Appeal shows that the Respondent and the vendor were aware that there were squatters on the suit land but still went ahead to purchase the suit land.

Counsel submitted that the Respondent does not qualify to be a bona fide purchaser for value without notice in the circumstances because he did not purchase the suit land in good faith. He argued that a person is considered a purchaser in good faith if he or she buys the property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of adverse claims and interest of another person in the same property. Counsel submitted that the Respondent visited the suit land and found that SCOUL was in possession with about 20 to 30 acres of sugar cane as per the evidence on record at page 112 paragraph 195-205.

Counsel therefore submitted that the Respondent had prior knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry but instead willfully neglected the possibility of the existence of a defect in the vendor's title. Counsel cited the Supreme Court of Belize case of **Padron v. The Minister of Natural Resources & 2 Others, Claim No. 671 of 2012**, where it was stated that "...the vendor is under a duty to show title. He is obligated to convey the interest he has agreed to sell free and clear from encumbrances. Moreover, a man can transfer no greater estate than that which he owns".

Counsel submitted that the Respondent did not inquire from the neighbors or the LC Chairman of the area to ascertain the kind of interest the Appellant had in the suit land.

Counsel cited **Vivo Energy Uganda Ltd v Lydia Kisitu, SCCA No. 07 of 2015, Uganda Posts & Telecommunications v Abraham Kirunda, SCCA No. 36 of 1995 and Kampala Land Board & Another v Venansion Babwevaka & Others, CA No. 57 of 2005** for the proposition that if a vendor is not in possession of the land he is selling, the purchaser must make inquiries of the person in possession or otherwise the property purchased will be subject to that person's right. That the Court of Appeal Justices were bound to follow the decisions of this Court on that position of the law (principle of *stare decisis*).

Counsel faulted the Justices of Appeal for having found that the *Nemo dat* rule did not apply to the facts/circumstances of this case. Counsel argued that the vendor (Nantume Flomera) had no title and could not have passed what she did not have to the subsequent purchaser (the Respondent).

### **Ground 3.**

Counsel faulted the learned Justices of the Court of Appeal for upholding the award of 50,000,000,000 (fifty billion shillings) as compensation. Counsel submitted that there was no evidence of payment in form of receipts, bank payments, invoice or stamp duty to show that the vendor was paid the money awarded as compensation as stated in the sale agreement and the addendum. Counsel submitted that the addendum on page 115 of the Record of Appeal shows the amount of 6,117,200,000/= as being the purchase price. That the plaintiff requested for 75,000,000,000/= (seventy five billion) as the market value of the suit land and the Appellant countered the valuation report to 40,392,000,000/= (forty billion three hundred ninety two million shillings) as the market value based on the chief government valuer's report.

### **Ground 4.**

Counsel submitted that the learned Justices of the Court of Appeal were speculative when they considered matters that were not pleaded in the plaint like loss of opportunity to invest and generate profits, loss of commercial opportunities to award an interest rate at 15% which was high and excessive. Counsel submitted that the trial Judge exercised his discretion injudiciously in awarding 15% interest on a matter that was not a commercial transaction.

In the alternative, Counsel submitted that if the Court is inclined to award interest, the rate at 6% should be considered in the circumstances. Counsel prayed Court to allow the appeal, set aside the lower Court's orders and costs be provided for.

## **Respondent's submissions.**

### **Ground 1.**

Counsel for the Respondent submitted that the Appellant never raised the argument founded on customary interest in land both at the trial court (High Court) and the appellate court (Court of Appeal). Counsel argued that a party is bound by its pleadings and as such Court should find the argument by counsel for the Appellant vague and misplaced. Counsel cited **Interfreight Forwarders (U) Ltd v East African Development Bank Civil Appeal No. 33 of 1992**, where this Court found that, "a party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings".

Counsel submitted that the High Court and the Court of Appeal rightly found that the Respondent had duly carried out due diligence prior to purchase of the suit land. Counsel submitted that the evidence on record clearly shows that the Respondent conducted a search three times from the land registry, a surveyor was commissioned to open boundaries, and the Registrar of titles transferred the suit land from the vendors name to the Respondent among others. Counsel contended that the evidence on record further shows that the vendor attempted to cause vacant possession of the suit land through Civil Suit No. 165 of 2012, wherein the Respondent applied to be added as a party, a conduct that was found by both lower Court's to constitute actions of a person who had no knowledge of SCOUL's interest in the suit land.

Counsel argued that both lower Court's rightly found that the Respondent had good title at all times until the cancellation of the its title and is therefore entitled to compensation for the unlawful deprivation of the suit land as a result of the error of the Commissioner Land Registration.

### **Ground 2.**

Counsel submitted that the learned Justices of the Court of Appeal properly re-evaluated the evidence on record and rightly found that the Respondent was a bona fide purchaser for value without notice. Counsel argued that since the Respondent conducted a search with the land registry and the reports showed that the suit land was registered in the names of Nantume Flomera Nakalema (vendor), the Respondent purchased the suit land in good

faith on belief that the information obtained from the registrar was true. Counsel argued that the steps undertaken by the Respondent prior to purchasing the suit land were sufficient and therefore the lower Courts were justified that the Respondent was a bona fide purchaser for value without notice.

Counsel submitted that the case of **Hilda Wilson Namusoke & 3 Others v Owalla's Home Investment Trust**, (supra) is inapplicable to the facts of this case because it dealt with the powers of the Commissioner Land Registration in cancelling a certificate for errors or illegalities unlike in the instant case where the Commissioner Land Registration is faulted for creating, maintaining and issuing the suit land with two titles.

### **Ground 3.**

Counsel submitted that the Learned Justices of the Court of Appeal rightly found that the learned trial Judge applied the right principles in awarding compensation for unlawful deprivation of the suit land from the Respondent as a result of an error by the Commissioner Land Registration.

Counsel submitted that the trial Court considered three valuation reports, one authored by a Government Valuer that valued the suit land at 40,392,000,000/= and the other two authored by the Respondent which valued the suit land at 55,000,000,000/= and valuation conducted after three years at 75,000,000,000/=. Counsel contended that in light of the circumstances of this case like the high value of the suit land, the fact that the suit land is situate in a lucrative industrial belt among others, the lower Courts rightly awarded 50,000,000,000/= as adequate compensation to the Respondent.

### **Ground 4.**

Counsel submitted the awards of interest are discretionary (section 26 of the Civil Procedure Act). Counsel submitted that interest awards in commercial transactions is different from that in cases of ordinary award of damages (**ECTA (U) Ltd v Geraldine S. Namurimu & Josephine Namukasa, Civil Appeal No. 29 of 1994**, where court held that "...the court has discretion to award reasonable interest on the decretal amount. But it appears that a distinction must be made between awards arising out of commercial or business transactions which would normally attract a higher interest, and awards on general damages which are mainly compensatory").

Counsel argued that the Respondent prayed for interest at a rate of 25% per annum in the amended plaint at page 186-187 of the Record of Appeal. Counsel contended that the Respondent under paragraph 9 of the amended plaint averred that it had suffered great loss and damage, loss of income and or value of the money committed among others. That the



Court of Appeal Justices were therefore not speculative when they maintained the award of interest at 25% per annum from the date of filing the suit till payment in full.

Counsel cited **B.M Technical Services Ltd v Crescent Transporters Co. Ltd Civil Appeal No. 8 of 2002**, where this court found that interest rate of 4% per annum too low and stated that compensatory sums even though unrelated to commercial transactions should still often carry higher rates of interest. Court also found interest rate of 22% per annum in a noncommercial transaction high.

### **Consideration of the appeal.**

This is a second appeal and the duty of a second appellate Court was long settled in various cases and decisions of this Court. In the case of **Tito Buhingiro v Uganda, SCCA No. 8 of 2014**, it was stated, *“it is trite law that as a second appellate court, we are not expected to re-evaluate the evidence. However, where it is shown that they did not evaluate or re-evaluate the evidence or where they are proved to be manifestly wrong on findings of fact, the court is obliged to do so and to ensure that justice is properly and timely served”*.

In the earlier case of **Kifamunte Henry v. Uganda, SCCA No.10 of 1997**, this court stated: *“On second appeal it is sufficient to decide whether the first appellate Court on approaching its task, applied or failed to apply such principles”*. See also **Pandya v. R. (1957) E.A. 336**. yl

Bearing the above principles in mind, I shall proceed to resolve the grounds of the appeal in the order they were argued by both counsel.

### **Ground 1.**

The complaint on this ground is that the learned Justices of the Court of Appeal erred in law and fact when they found that the Respondent had good title. Counsel submitted that the Respondent failed to conduct due diligence before the purchase of the suit land. Counsel submitted that the Respondent had knowledge that there was a third party in possession of the suit land with a sugar cane plantation. Counsel also argued that the Respondent ought to have inquired into the kind of interest SCOWL had in the suit land (Customary land ownership).

On the other hand, Counsel for the Respondent submitted that Respondent conducted due diligence before the purchase of the suit land. Counsel pointed to three land registry searches conducted by the Respondent, which inter alia indicated that the suit land was registered in the names of the intended vendor (Nantume Flomera Nakalema).

I note at this point that, this was a claim for recovery of adequate compensation for the negligent actions of the Commissioner Land Registration of which the Government is liable for the damage caused and as such the Respondent is entitled to a remedy.

The undisputed facts on record show that SCOUL was registered on the suit land on 28/11/2007 and the Respondent on 8/5/2013. The Respondent purchased the suit property from Nantume Flomera Nakalema (administratrix of the estate of the late Kiwanuka Samuel Kaliginya).

Clearly, the evidence on record shows that the Respondent's title was obtained while there was an already existing title by Sugar Corporation of Uganda Limited. Hence an action by the Respondent for compensation against the Appellant for the actions of the Commissioner Land Registration who issued, maintained and cancelled the Respondent's title.

The Record of Appeal on pages 299-301 show Register searches conducted by the Respondent on 23<sup>rd</sup> February 2012, 4<sup>th</sup> October and 20<sup>th</sup> October and they all show that the vendor (Nantume Flomera Nakalema) was the registered proprietor of the suit land. The Respondent also engaged the services of a surveyor for purposes of opening boundaries (pages 302 and 371 dated 21<sup>st</sup> July 2011 and 1<sup>st</sup> September 2011 respectively) and the findings on both reports showed that Nantume Flomera Nakalema was the registered proprietor and that the suit land had no encumbrances. Basing on the above information that the suit land belonged to the vendor and the assurance by the vendor for vacant possession (clause 4.1 of the Addendum on page 379 of the Record of Appeal), the Respondent went ahead and purchased the land and was thereafter Registered on the title on 8/5/2013 until the Commissioner Land Registration cancelled the same upon finding that there was an already existing title by Sugar Corporation of Uganda Limited and that the Respondent's title was issued in error.

Section 59 of the Registration of Titles Act provides: -

*No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose*

*of the land described in the certificate is seized or possessed of that estate or interest or has that power.*

In the case of **Kampala Bottlers Ltd v Damanico (U) Ltd SCCA No. 22 of 1992**, H. G. Platt, JSC held: “Registered title cannot be set aside for mere irregularity in the preliminary stages. (See Sec. 56 of the Registration of Titles Act (now section 59). It is fraud that has to be proved where Section 184 (c) of the Registration of Titles Act (now section 176) is involved.”

According to the above provision and the authority cited, it is clear to me that production of a certificate of title in the names of any person (in this case the vendor Nantume Flomera Nakalema) is conclusive evidence of ownership of that land unless the title is bound by the exceptions under section 176 of the Registration of Titles Act. The section provides: -

*No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person Registered as proprietor under this Act, except in any of the following cases—*

- (a) *the case of a mortgagee as against a mortgagor in default;*
- (b) *the case of a lessor as against a lessee in default;*
- (c) *the case of a person deprived of any land by fraud as against the person Registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so Registered through fraud;*
- (d) *the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of the other land or of its boundaries as against the Registered proprietor of that other land not being a transferee of the land bona fide for value;*
- (e) *the case of a Registered proprietor claiming under a certificate of title prior in date of registration under this Act in any case in which two or more certificates of title may be Registered under this Act in respect of the same land, and in any case other than as aforesaid the production of the Registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it, any rule of law or equity to the contrary notwithstanding.*

In the instant case, the Appellant/defendant pleaded fraud under paragraphs 4 and 6 of the amended written statement of defence. I hasten to say that the Appellant did not specifically

plead the particulars of fraud in the amended statement of defence (page 190-192 of the Record of Appeal).

It is a well settled position of the law that once a party pleads fraud, he/she must specifically state its particulars and the burden of proof lies on that person to prove it on balance of probabilities which is heavier/higher than that required in ordinary civil matters. See: *Kampala Bottlers Ltd v Damanico* (supra). Both lower Courts found that the Appellant did not specifically plead nor strictly prove fraud on part of the Respondent nor the vendor which I accept. I have perused the record and I do not find evidence of fraud as alleged by the Appellant, committed by the respondent.

The Appellant argued that the Respondent should have made more inquiries through the local authorities and SCOUL that was in possession of the suit land. As already stated in this judgment, the Respondent conducted three different searches on different occasions. All the three search reports were endorsed by the Commissioner Land Registration Mukono office and they showed that the vendor (Nantume Flomera Nakalema) is the registered proprietor of the suit land. The vendor assured vacant possession to the Respondent and went ahead to institute a suit vide 165 of 2012 in the High Court against SCOUL.

Halsbury's laws of England Volume 26 on inquiries and inspection state; *"before entering into a formal contract, the purchaser must make an inspection of the property since he is deemed to buy with notice of patent defects of title. However, the constructive notice which arises from the occupation of land by someone other than the vendor is not itself sufficient to make the defect patent. Since the purchaser cannot in general escape from being affected with notice of any patent defect in the property merely by pleading his own lack of knowledge necessary to enable him to make a proper inspection, it is in general advisable for him to have the property surveyed by a qualified surveyor."*

The evidence on record clearly shows that although the respondent had knowledge of another party occupying the suit land and was assured that vacant possession would be obtained, it went ahead and engaged the services of a surveyor on two different occasions. Three searches were conducted which indeed confirmed the vendor as the registered proprietor of the suit land. In my view the inquiries made by the Respondent were sufficient to go ahead and purchase the suit land from the vendor. I find that the Respondent had conducted reasonable due diligence before the purchase of the suit land.

The record does not impute fraud on part of the respondent or the vendor during the transactions and therefore the respondent had good title.

Ground 1 fails

**Ground 2.**

The Appellant's complaint is that the learned Justices of the Court of Appeal erred in law and in fact when they found that the Respondent was a bona fide purchaser for value without notice. Counsel for the Appellant argued that since the Respondent had knowledge of SCOUL occupying the suit land, it could not claim to be bona fide purchaser for value without notice. Counsel added that the instant case is clear case where the principle of *nemo dat* rule applies.

Black's Law Dictionary 8<sup>th</sup> Edn at page 1271 defines bona fide purchaser to mean one who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller's title; one who in good faith paid valuable consideration for property without notice of prior adverse claims.

In the case of **Kampala Bottlers Ltd v Damanico (U) Ltd, SCCA NO. 22 of 1992** this court held that even if fraud is proved, it must be attributable directly or by implication, to the transferee. Wambuzi, C.J stated at page 7 of his judgment;

*“.....fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.”*

The learned Chief Justice went further to state:

*“Further, I think it is generally accepted that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters.”*

In upholding the findings of the trial court, Gashirabake, JA stated: -

*“I have considered the Survey report made following the survey of the suit land at pages 22 to 23 of the supplementary Record of Appeal. The report noted that the suit land, measuring 165 hectares, was at the time Registered as Block 171 Plot 1 Kyaggwe, with the proprietor being Nantume Flomera Nakalema. The survey report recommended that all dealings with the registered proprietor should be done with confidence and that the suit land was suitable for various activities like residential estate, industrial estate and others. It will also be noted that the Respondent made searches of the Register and the land office confirmed that Nantume was the proprietor of the suit land.*

*I also observe that the Respondent prior to the purchase, visited the suit land and saw that there was sugar cane being grown on the suit land, at the time. The Respondent inquired from the vendor and was assured that the sugar cane on the suit land would be removed.*

*...the learned trial Judge was right in finding that the Respondent conducted sufficient inquiry by searching the Register. as the learned trial Judge rightly noted, under the Torrens system of land registration, the Register is everything, and that except in cases of actual fraud on part of the person dealing with the Registered proprietor, such person upon registration of title has indefeasible title against the whole world."*

As already stated in this judgment, the Appellant neither pleaded nor proved fraud on the part of the Respondent in order to impeach its title. Nevertheless, both courts discussed the element of fraud and concurrently found that the Appellant never proved fraud against the Respondent and hence declared the Respondent as bona fide purchaser for value without notice. I am satisfied that the evidence on record does not impute fraud on part of the Respondent and it is justified to hold in the circumstances that the Court of Appeal Justices rightly upheld the findings of the trial Judge.

I also agree with the Court of Appeal Justices that principle of *nemo dat* rule does not apply in this case. The vendor (Nantume Flomera Nakalema) had title upon which the Respondent was registered as the proprietor by the Registrar lands. There was proof of ownership of the suit land by the vendor at the time of purchase.

Ground 2 fails.

### **Ground 3.**

The Appellant's complaint is that the learned Justices of the Court of Appeal erred in law and fact when they found that the Respondent was entitled to 50,000,000,000/= as fair valuation of the suit land which was manifestly harsh and excessive.

The sale agreement on court record at page 304-320, shows that the Respondent purchased the suit land in 2011 at an agreed consideration of 6,117,200,000/=. In the amended plaint at page 186-187 the Respondent pleaded special damages of Uganda shillings 55,200,000,000/= as the market value of the suit land and Uganda shillings 200,000,000/= as legal fees incurred in settling HCCS No. 165 of 2012.

According to the evidence on record and the documents involved, the trial Judge relied rightly, in my view, on the evidence of the three valuation reports that put the suit land at 40,392,000,000/= by 14<sup>th</sup> February 2017 by government valuer, 55,000,000,000/= by 25<sup>th</sup> July 2016 and 75,000,000,000/= by 14<sup>th</sup> July 2020 (valuer engaged by the plaintiff). The

award of 50,000,000,000/= in my view was not excessive considering the fact that the suit land was a high value property in a fast growing industrial belt.

Ground 3 fails too.

#### **Ground 4.**

The Appellant's complaint on this ground is that the learned Justices of the Court of Appeal erred in law and fact when they unjudicially upheld 15% p.a interest from the date of filing the suit until payment in full which is manifestly high and excessive. Counsel for the appellant submitted that the matter was not a commercial transaction that normally attracts an interest at high rates than compensatory matters. Counsel further submitted that the lower courts considered facts that were not pleaded like loss of opportunity to invest and loss of commercial opportunities.

I have carefully perused the record. The Court of Appeal Justices while upholding the award of 15% interest stated that the Respondent was engaged in business and the fact that in being deprived of the suit land, the Respondent was denied an opportunity to invest and generate profits, justified the award of compensation for lost commercial opportunities.

The Respondent under paragraph 1 of the amended plaint (page 181 of the Record of Appeal) stated that; **"The plaintiff is a limited liability company carrying on business of real estate management and development."** Paragraph 3 of the same stated that; **"The plaintiff brings this suit against the defendant for the recovery of adequate compensation, special damages and lost earnings, general damages, interest and costs..."**

As shown from paragraph 1 of the plaint reproduced above, the Respondent deals in real estate management and development and it is apparent that the suit land was purchased to be developed and managed for profitable earnings. This was not possible to achieve after the cancellation of the title. I do not accept counsel for the Appellant's submission that this matter was not a commercial transaction. In my view it was because it was a business carried out by the respondent to earn profits.

S. 26 of the **Civil Procedure Act, Cap 71** as follows:

#### **"S. 26 Interest.**

- (1) Where an agreement for the payment of interest is sought to be enforced, and the court is of opinion that the rate agreed to be paid is harsh and unconscionable and ought not to be enforced by legal process, the court may give judgment for the payment of interest at such rate as it may think just.**

**(2) Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.**

**Where such a decree is silent with respect to the payment of further interest on the aggregate sum specified in subsection (2) from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have ordered interest at 6 percent per year.”**

In light of the above provision, I find subsection 2 applicable to this case. In **Uganda Development Bank v. National Insurance and Another, SCCA No. 28 of 1995**, this court cited the case of **Mbogo v. Shah [1968] E.A 93**, where Newbold at page 96, stated the principle to be that “...a Court of Appeal should not interfere with the exercise of discretion of a Judge unless it is satisfied that the Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision or unless it is manifest from the case as a whole that the Judge has been clearly wrong in the exercise of his discretion that as a result there has been a misjustice”

While in **Shah v. Allu [1974] 14 EACA**, it was held inter alia that, it must be shown that there was unjudicial exercise of discretion at which no judge could reasonably arrive at whereby injustice has been done to the party complaining.

I have already reproduced s.26 of the Civil Procedure Act which governs awards of interest. I have read the Record of Appeal in respect of the award of the 15% interest. The learned Justices considered the circumstances of this case and took into account all what the respondent lost ie (1) that the Respondent was deprived of the suit land, (2) that the Respondent was denied an opportunity to invest and generate profits, (3) that when the trial Judge entered judgment in 2021, the average lending rate was 23% ([Tradingeconomics.com/Uganda/interest-rate](http://Tradingeconomics.com/Uganda/interest-rate)), (4) that situation on interest rates has further worsened owing to the global economic pressures that have driven all macro-economic indicators including interest rates. I find that, they exercised their discretion judicially. I am unable to fault the learned Justices of the Court of Appeal and I would not interfere with the said decision.

Ground 4 fails too.



In the result, I find no merit in the appeal. It is dismissed and the Court of Appeal decision and orders are upheld with costs of this Court and the Courts below.

**Decision of the Court.**

Since all the other four members of the Coram concur with my lead judgment, the appeal is dismissed in the terms as stated therein.

Dated at Kampala this .....12<sup>th</sup>.....day of January.....2024.

.....*Mwondha*.....  
**Mwondha**  
**Justice of the Supreme Court**

5

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

*[CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE; MUSOTA;  
MADRAMA JJ.S.C.]*

**CIVIL APPEAL No. 0005 OF 2023**

10

**BETWEEN**

**ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: APPELLANT**

**AND**

15 **HENLEY PROPERTY DEVELOPERS LTD::::::::::::::::: RESPONDENT**

*[Appeal arising from the judgment of the Court of Appeal at Kampala in Civil Appeal No. 0421 of 2021 before (Musoke, Gashirabake and Luswata, JJA) dated 9<sup>th</sup> January 2023.]*

20

**JUDGMENT OF TIBATEMWA-EKIRIKUBINZA, JSC.**

I have had the benefit of reading the judgment of my learned sister,  
Hon. Justice Faith Mwendha, JSC. I agree with her analysis and  
25 conclusion that the appeal be dismissed with costs in this Court as  
well as those in the courts below.

Dated at Kampala this .....<sup>12<sup>th</sup></sup> day of .....*January*..... 2024.

30

.....*L Luswata*.....  
**HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA**  
**JUSTICE OF THE SUPREME COURT.**

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT KAMPALA**  
(CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE;  
MUSOTA; MADRAMA; JJSC)

**CIVIL APPEAL NO. 05 OF 2023**

**ATTORNEY GENERAL .....APPELLANT**

**VERSUS**

**HENLEY PROPERTY DEVELOPERS LTD .....RESPONDENT**

*[Appeal arising from the judgment of the Court of Appeal at Kampala before Hon. Justices Elizabeth Musoke, Christopher Gashirabake and Eva Luswata, JJA, in Civil Appeal No. 421 of 2021, dated 9<sup>th</sup> January, 2023]*

**JUDGMENT OF TUHAISE, JSC.**

I have had the benefit of reading in draft the Judgment prepared by my learned sister Hon. Justice Faith Mwendha, JSC.

I agree with her decision and conclusions that this appeal fails, and that it is dismissed with costs of this Court and the courts below.

Dated at Kampala, this .....12<sup>th</sup>..... day of.....*January*.....2024.



Percy Night Tuhaise

**Justice of the Supreme Court**

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT**  
**KAMPALA**

**CIVIL APPEAL NO. 0005 OF 2023**

**[CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE,  
MUSOTA & MADRAMA; JJSC]**

**ATTORNEY GENERAL ::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**HENLEY PROPERTY DEVELOPERS LTD ::::::::::::::: RESPONDENT**

**JUDGMENT OF STEPHEN MUSOTA, JSC**

I have had the benefit of reading in draft the judgment by my sister Hon. Justice Faith Mwendha, JSC.

I agree with her analysis, conclusions and the orders she has proposed.

Dated this 12<sup>th</sup> day of January 2024



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**Stephen Musota**  
**JUSTICE OF THE SUPREME COURT**

5

THE REPUBLIC OF UGANDA,

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: MWONDHA, TIBATEMWA – EKIRIKUBINZA, TUHAISE, MUSOTA & MADRAMA, JJSC)

CIVIL APPEAL NO 005 OF 2023

10 ATTORNEY GENERAL} ..... APPELLANT

VERSUS

HENLEY PROPERTY DEVELOPERS LTD} .....RESPONDENT

*(Appeal against the judgment and decision of the Court of Appeal in Court of Appeal Civil Appeal No. 0421 of 2021 at Kampala, before Musoke, Gashirabake and Luswata, JJA dated 9<sup>th</sup> January, 2023)*

15

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JSC

I have had the benefit of reading the in draft the judgment of my learned sister Mwondha, JSC. The facts on which the appeal is based has been clearly set out in her judgment as well as the arguments of counsel for and against the grounds of appeal. I need not repeat them here and adopt those facts and arguments for purposes of my judgment. While I concur with my learned sister as far as the determination of the appeal is concerned, I would like to add a few words of my own on grounds 1 and 2 of the appeal and particularly on the matters of law that I want to highlight.

20

When the respondent filed an action against the Attorney General, it was for recovery of adequate compensation, special damages, general damages, interest and costs of the suit arising from cancellation of its title and indeed the entire certificate of its title to the suit property as described here after. There was no suit before the trial court as envisaged under the law provided for in section 176 of the Registration of Titles Act cap 230 (the RTA). Section 176 of the RTA provides for the instances in which an action for impeachment of title of the registered proprietor may be brought. In the

30

5 action of the respondent, there was no suit to impeach the title of the registered proprietor Messrs Sugar Cooperation Uganda Limited (SCOUL) which had a title that covered a wider area inclusive of the smaller one covered by the suit property registered in the names of the respondent. The respondent's title is described as East Buganda Kyaggwe Block 171 Plot 6  
10 Kasenso – Namasaga measuring approximately 123.831 Hectares. On the other hand, Sugar Cooperation Uganda Ltd had title described as Freehold Register Volume 64 Folio 18 registered in its names on 26<sup>th</sup> November 2011 and measuring approximately 882.39 acres. The 128.831 hectares registered in the names of the respondent is within the 882.39 hectares registered in  
15 the names of SCOUL leading to a conflict over two titles covering the portion of 128.831 hectares registered in two names separately.

The issue is that the respondent who was the plaintiff in the trial court was aggrieved by the actions and omissions of the Registrar of Titles (or the Commissioner Land Registration or the CLR) for creating, maintaining and  
20 thereafter cancelling the suit land certificate of title in the names of the respondent following which the plaintiff claimed that it suffered loss. The loss claimed was that the respondent had bought the 128.831 hectares from a registered proprietor certified as such by the Commissioner for Land Registration. The respondent contended that the registration amounted to  
25 wilful or negligent misrepresentation to the world at large and that it relied upon the representation to its detriment.

The plaintiff pleaded *inter alia* of the actions of the CLR that it; "*knowingly and deliberately representing in the Register Book suit property, whereas the same was non-existent.*" This fundamental pleading is confusing only  
30 because the action of the plaintiff is for compensation for land comprised in Plot 6 block 171 Kyaggwe. Can the government compensate a claimant for a non-existent property? What happened is that there was registration of title for a particular plot which was surveyed and on the basis of which the respondent bought from the registered proprietor thereof. The respondent  
35 bought from a registered proprietor after the confirmation of the Commissioner for Land Registration that the registered owner who had

5 registered title had a genuine title as reflected in the certificate of title. It follows that the cause of action in the suit claiming the market value of the suit property is for representations in the register book to the effect that there was a portion of land that could be located on the cadastral map registered in the names of the vendor who sold to the respondent.

10 It is possible in law for two certificates of title to be registered for the same interest covered on the land and the question has always been which certificate of title takes priority over the other. Further to the point, the Commissioner for land registration cancelled the respondent's certificate entirely on the premises that the land it represents on title land forms part  
15 of land whose title was issued to Uganda Sugar Cooperation Ltd (SCOUL).

The third point to be made is that the transaction leading to the registration of the respondent was a sale and transfer of title from the registered proprietor (the vendor) who was confirmed by the CLR as the duly registered owner. It follows that the basis of the respondent's registration  
20 on the title was not an error of the registrar. The respondent purchased the land for consideration from the registered owner who was confirmed as such after due diligence of search of the register. The defence of the Appellant who was the defendant in the trial court was that the plaintiff (now the respondent in this court) procured registration into its names  
25 fraudulently. The issue which came out of this controversy was whether the plaintiff was a bona fide purchaser for value. Secondly, and to the point, I want to emphasise the question of whether the CLR was justified in cancelling the certificate of title in issue. The third issue is intertwined with issue 1 as to whether the plaintiff procured the title fraudulently.

30 The High Court found that the respondent searched the register thrice and was given the same results and the registered proprietor undertook to evict squatters who had cultivated the land. The plaintiff had no knowledge that the land was concurrently registered in the names of SCOUL. The fact that the land was partially cultivated was not sufficient notice and moreover the  
35 vendor filed High Court Civil Suit No. 165 of 2012 seeking an order for eviction of SCOUL from the land. The respondent applied to the High Court

5 to be added as a party to the suit for vacant possession. The respondent subsequently withdrew the suit and instead sued for compensation from the government. At the stage of withdrawal of the suit, the plaintiff had been persuaded that the vendor who sold to it had a genuine registered title. The plaintiff's suit against the CLR was for the office maintaining two separate  
10 titles in the names of two different proprietors over the same land. The plaintiff withdrew the suit against SCOUL because SCOUL's title was registered prior in time (over the same land). The plaintiff in the circumstances proved that it purchased the suit property in good faith and for valuable consideration. The plaintiff was a bona fide purchaser for value  
15 without notice of any defect in title of the vendor.

The court also considered whether the CLR was negligent in creating, maintaining and issuing the certificate of title to the suit land and in the names of the vendor's predecessor in title. The High Court found that the CLR created, maintained and issued the certificate of title to the plaintiff in  
20 error. The plaintiffs suit was based on the authenticity and validity to be accorded to a certificate of title issued by the Registrar. The plaintiff was entitled to assurance by virtue of such registration of title and could rely on it. If the plaintiff relied on the title to its detriment, it was entitled to compensation. The Court found that the CLR issued the certificate in error  
25 and the Attorney General was vicariously liable.

I will restrict my comments to the two grounds of appeal in the COA which were; (1) That the learned trial judge erred in law and fact in holding that the vendors had a valid certificate of title. (2) The learned trial judge erred in  
30 law in holding that the respondent qualified to be a bona fide purchaser for valuable consideration without notice. This could resolve grounds 1 and 2 of the appeal in this Court as well.

On ground 1 which the COA considered together with ground 5 on evaluation of evidence, Gashirabake, JA stated that the claim was founded on cancellation of a certificate of title, created, maintained and issued by the  
35 CLR. He agreed with the trial judge that such a certificate as created, according to the evidence, was indefeasible except on the ground of fraud.



5 The respondent was entitled to the assurance of title under the Torrens  
System of registration based on the four principles of; indefeasibility,  
10 registration of title, the curtain principle of abolition of notice or exhaustive  
inquiry and assurance (compensation upon detrimental reliance). When the  
plaintiff was assured by the CLR of the authenticity of the certificate of the  
15 vendor, and the plaintiff relied on the information and suffered loss, it had  
a cause of action against the defendant for compensation. It did not matter  
whether the cause of action was in negligence or for the error of the CLR.  
Production of a certificate of title was sufficient proof of the particulars in  
it (see section 59 RTA). Title could be impeached under section 176 of the  
20 RTA inter alia for fraud which was not proved against the respondent.  
Issues 1 and 5 were answered in the negative.

On the issue of whether the respondent was a bona fide purchaser for value  
without notice, Gashirabake JA found no basis for interference with the  
25 decision of the trial judge. He found from the facts re-evaluated that the  
learned trial judge was right to find that the respondent conducted sufficient  
due diligence. The respondent was a bona fide purchaser for value without  
notice of any defect of title.

Both courts reached concurrent findings of fact on the above two issues  
and considered the same facts and this Court can only interfere with these  
30 findings on a point of law.

The overarching point of law is whether the registrar had authority to cancel  
the second certificate of title issued for the suit land over and above the  
certificate of SCOUL. The existence of two certificates of title covering the  
same land is an envisaged situation provided for under section 46 and 48  
35 (1) of the RTA which provide that:

46. Effective date of registration; the duly registered proprietor.

(1) Subject to section 138(2), every certificate of title shall be deemed and taken  
to be registered under this Act when the registrar has marked on it—

(a) the volume and folium of the Register Book in which it is entered; or

5 (b) the block and plot number of the land in respect of which that certificate of title is to be registered.

10 (2) Every instrument purporting to affect land or any interest in land, the title to which has been registered under this Act, shall be deemed to be registered when a memorial of the instrument as described in section 51 has been entered in the Register Book upon the folium constituted by the certificate of title.

(3) The memorial mentioned in subsection (2) shall be entered as at the time and date on which the instrument to which it relates was received in the office of titles together with the duplicate certificate of title and such other documents or consents as may be necessary, accompanied with the fees payable under this Act.

15 (4) The person named in any certificate of title or instrument so registered as the grantee or as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate or instrument shall be deemed and taken to be the duly registered proprietor of the land.

48. Instruments entitled to priority according to date of registration.

20 (1) Every instrument, excepting a transfer, presented for registration may be in duplicate and shall be registered in the order of and as from the time at which the instrument is produced for that purpose, and instruments purporting to affect the same estate or interest shall, notwithstanding any actual or constructive notice, be entitled to priority as between themselves according to the date of registration and not according to the date of the instrument.

25 (2) Upon the registration of any instrument not in duplicate, the registrar shall file and retain it in the office of titles, and upon the registration of any instrument in duplicate, the registrar shall file one original and shall deliver the other, hereafter called the duplicate, to the person entitled to it.

30 The sections are clear and unambiguous and also self – explanatory. Section 46 provides for how memorials of transfer are entered in the register and that this is done with dates and timelines for the entries of registrable instruments. The time at which a memorial of a transfer instrument is entered is material and under section 48 (1) instruments are  
35 to take priority according to their registration in time. The instrument registered earlier in time takes priority over the one registered later. Clearly, and prima facie, the vendor who sold to the respondent was

5 registered later in time and the title of SCOUL took precedence over that of the respondent under the RTA because there was a conflict in relation to the portion of the area of land covered by the respondent's certificate which was also covered by the SCOUL, prior issued, certificate of title.

10 The respondent had no cause of action against SCOUL but what it only pursued was a cause of action against the Government for creating, maintaining, and issuing a certificate of title over and above the prior issued certified of title in the names of SCOUL which certificate of title also covered the land for which title was issued to the vendor and sold to the respondent. Did the registrar after maintaining this title for over 3 years have authority  
15 to cancel it under section 91 of the Land Act? Section 91 (2) (a) of the Land Act, cap 227 provides that:

91. Special powers of registrar.

(1) Subject to the Registration of Titles Act, the registrar shall, without referring a matter to a court or a district land tribunal, have power to take such steps as are  
20 necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise.

(2) The registrar shall, where a certificate of title or instrument—

- (a) is issued in error;
- 25 (b) contains a misdescription of land or boundaries;
- (c) contains an entry or endorsement made in error;
- (d) contains an illegal endorsement
- (e) is illegally or wrongfully obtained; or
- (f) is illegally or wrongfully retained,
- 30 call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.

Section 91 (2) (a) of the Land Act confers powers on the registrar to call for a certificate of title and cancel it where it is issued in error. The error

5 envisaged is the error of the CLR. In this case the title of the respondent was obtained upon a transaction between the vendor and the respondent on the basis of a certified certificate of title. The certificate was apparently created and registered on or before the 31<sup>st</sup> of May 2011 in the names of Nantume Flomera Nakalema under instrument No. MK0122094 at 8.30 am.  
10 It was in her capacity as administrator of the estate of Kiwanuka Samuel Kaliginya. There is no information on the deed as to when Kiwanuka Samuel Kaliginya was registered. As to whether this was a partition and mutation of land is not indicated. Subsequently, the title was transferred to Nabunjo Manjeri on 23<sup>rd</sup> April 2012 under instrument No. MK0134158. The property  
15 was further transferred to Henley Property Developers Ltd on 8<sup>th</sup> May 2013 under Instrument No. MKO - 0000022. If the theory of an error is to be accepted, these are three errors in three separate years on the same title by the Commissioner for Land Registration.

20 In **Hilda Wilson Namusoke, Vincent Kiwanuka and Kenneth Lubega (as Administrators of the estate of the late Nambi Magdalene Scott) vs Owalla's Home Investment Trust (E.A) Ltd and Commissioner for Land Registration; Supreme Court Civil Application No. 14 of 2019** this court held that the error envisaged under section 91 (2) (a) cannot be the registration of a transfer procured by the execution of an instrument presented for registration by  
25 action of the vendor and transferee in title. That the error envisaged under section 91 (2) (a) of the Land Act is necessarily the error of the Registrar and not of a transferee in title unless the name of the transferee was entered in error and not on the basis of an instrument of transfer of properly registered as such. Further more needs to be proved to show that the  
30 certificate of title was issued in error. The registrar cannot rely on section 91 to cancel title on the basis of the action of third parties which he or she believed to be true and based on the records established from the register. This is what happened. The titles purported to be duly registered and were based on transfer instruments of a vendor who is a registered owner. The  
35 land was part of a land which was available and maps showed where it was. The only issue which remained unknown is how the vendors obtained a certificate of title when there was another title over the same area. Was it

5 an error of the surveyor or was it fraud. The registrar's position which I find erroneous was that it was an error.

The Commissioner for land registration after registering land pursuant to a transfer instrument for which taxes are paid should not be allowed to use section 91 (2) (a) to cancel them at will even after assuring third parties who  
10 carry out searches on what the register reveals. Such a holding by a court would rob members of the public of the value of a search which brings about uncertainty in title after its certification. It will rob banks of security which is assured by section 59 of the RTA that a certificate of title is conclusive evidence of title. An error of the registrar envisaged is error occasioned by  
15 mistaking numbers, entering a wrong name, registering a wrong plot etc. what happened could not have been an error because it was even confirmed by surveyors. For instance, the survey report of JOLANAM SURVEY SERVICES, reads in part as follows:

20 "The area surveyed is 165.006 hectares agreeing with the area indicated on the title.

All the distances check with the dimension on the title."

This cannot be an error because the evidence shows that the title was issued after a survey and the deed has a map which on measurement on the ground tallied with the description on the title. That means that a title  
25 was created and its area and location mapped out and registered. Such a title ought to be cancelled by court for valid grounds and not by the registrar under section 91 of the Land Act.

Further, the respondent did not file an action against the registered proprietor or vendor and the issue of whether the respondent was a bona  
30 fide purchaser is considered in relation to whether the company is entitled to compensation having been persuaded by the assurance of title through the office of the CLR to purchase the land. In any case the registrar purported to cancel the title for the error of his or her office and not for any fraud. As far as an action for cancellation of title is concerned it proceeds

5 against the person registered as proprietor which is not the case here.  
Section 176 of the RTA provides that:

176. Registered proprietor protected against ejectment except in certain cases.

10 No action of ejectment or other action for the recovery of any land shall lie or be  
sustained against the person registered as proprietor under this Act, except in  
any of the following cases—

(a) the case of a mortgagee as against a mortgagor in default;

(b) the case of a lessor as against a lessee in default;

15 (c) the case of a person deprived of any land by fraud as against the person  
registered as proprietor of that land through fraud or as against a person deriving  
otherwise than as a transferee bona fide for value from or through a person so  
registered through fraud;

20 (d) the case of a person deprived of or claiming any land included in any certificate  
of title of other land by misdescription of the other land or of its boundaries as  
against the registered proprietor of that other land not being a transferee of the  
land bona fide for value;

25 (e) the case of a registered proprietor claiming under a certificate of title prior in  
date of registration under this Act in any case in which two or more certificates  
of title may be registered under this Act in respect of the same land, and in any  
case other than as aforesaid the production of the registered certificate of title or  
lease shall be held in every court to be an absolute bar and estoppel to any such  
action against the person named in that document as the grantee, owner,  
proprietor or lessee of the land described in it, any rule of law or equity to the  
contrary notwithstanding.

30 The suit of the respondent proceeded against the actions of the Registrar  
and was for compensation for loss occasioned by actions of the registrar.  
This is covered by section 185 of the RTA which provides that:

185. Persons sustaining loss may recover damages.

35 (1) Any person who has sustained or hereafter sustains any loss or damage in or  
by the exercise or supposed exercise by the registrar of any of the powers or  
duties conferred or imposed on him or her by this Act, and who has not been party  
or privy to the application or dealing in connection with which the power was

5 exercised, may, notwithstanding sections 178 and 183, and without prejudice to the rights, if any, of that person under those sections in the first instance and without any obligation to pursue the remedies provided by those sections, bring an action against the Government for recovery of damages.

10 (2) Where the person referred to in subsection (1) has been party or privy to the application or dealing referred to in that subsection, he or she shall be at liberty to join the Government as co-defendant in any action brought by him or her in respect of such loss or damage against any other person or persons who has or have been party or privy to that application or dealing.

15 186. Person claiming may before action brought apply to registrar for compensation.

(1) Any person sustaining loss or damage in any case in which he or she is entitled to bring an action to recover damages against the Government may before commencing proceedings make application in writing to the registrar for compensation, and that application shall be supported by affidavit.

20 (2) If the registrar admits the claim or any part of it and certifies accordingly to the Attorney General, the Minister may thereupon, if he or she thinks fit, authorise payment by the Secretary to the Treasury of the amount so certified.

The respondent could have brought an application to the registrar for compensation. Section 186 (1) of the RTA gives the option to the aggrieved party whether to first apply to the registrar for compensation due to loss or damages occasioned by the acts or omissions of the registrar. What happened is that the respondent decided to sue for compensation and brought the action against the Government. The registrar had already erroneously proceeded to cancel the certificate of title registered in the name of the respondent under section 91 of the Land Act. For the above reasons, I would dismiss grounds 1 and 2 of the appeal in this court which are that:

1. The learned Justices of the Court of Appeal erred in law and in fact in failing to evaluate the evidence on Court record in holding that the respondent had good title.

5        2. The learned Justices of the Court of Appeal erred in law and fact in holding that the Respondent was a bona fide purchaser for valuable consideration without notice.

The central question is not whether the respondent acquired good title. It is whether the respondent acted diligently in acquiring the property and was  
10 justified in spending the money. To conclude the matter, I have considered two pertinent statutory provisions. The first is that the registrar does not have to preserve on the title, all the previous transfers of property chronologically. Section 68 of the RTA provides that:

68. History of various dealings affecting land to be preserved.

15 Such references shall be noted in the Register Book and on instruments filed hereunder as will allow the title to be traced either downwards from or upwards to the original certificate of title; but it shall not be necessary in any certified copy of any grant, certificate or instrument to insert such references; and every such copy shall be deemed complete, notwithstanding the omission of such references.

20 The omission of the record, if any, showing how Samuel Kiwanuka Kaliginya got registered was not fatal to the certificate of title and the respondent could enter into a purchase agreement on the basis that the title as certified is a genuine certificate of title. Secondly, the respondent was under no obligation to inquire into the history of how the vendor got registered under  
25 section 136 of the RTA which provides that:

136. Purchaser from registered proprietor not to be affected by notice.

30 Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any registered land, lease or mortgage shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which that proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice actual or  
35 constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.



5 In the premises, the respondent could have acquired good title but for the  
previously unknown factor of a prior registration of SCOUL on the same  
land affected by the respondent's title. The title of SCOUL took priority over  
that of the respondent and the respondents case is that it was persuaded  
10 by the state of the register of lands to pay money for land reflected in a  
certificate of title when the land had a prior certificate issued to someone  
else leading to loss or damage. Secondly, the facts were sufficient for the  
respondent to go ahead with the deal and the respondent incurred loss due  
to the state of the registry and the representations of the CLR to the public.

The third problem is that the Attorney General did not pursue the vendors  
15 for any fraud and the registrar admitted that it was the error of its office  
which occasioned the creation of the impugned title deed. Though I do not  
agree that there was an error and I think that the office was involved in a  
colourable process which should have been investigated to establish who  
the people concerned were. However, the office of the registrar took the  
20 blame on the premises that it had committed an "error". The alleged error  
caused damage to innocent people and therefore the Attorney General is  
liable for the acts and omissions which occasioned expenditure or dealings  
in land affecting innocent third parties which could have been avoided.

In the premises, I concur with the decision of my learned sister that ground  
25 1 of the appeal be dismissed.

In relation to ground 2, the same issue recurs. A bona fide purchaser for  
value without notice of any defect should have gotten a good title but the  
title the respondent got was not good and the registrar, though without  
jurisdiction, cancelled it. Then respondent's case is that it acted on the basis  
30 of representations of the office and I, in the premises, concur with the  
decision of my learned sister that ground 2 of the appeal should also be  
dismissed.

On the question of the appropriate quantum of damages, the lower courts  
relied on the evidence which disclosed how much the respondent paid for  
35 this land. The issue of how the vendor and her predecessors got the

5 certificate of title and how Kiwanuka Samuel Kaliginya got registered. This  
should have been tried as against the vendor who sold the land to the  
respondent. The vendors took the money and the Attorney General could  
have taken out third party proceedings for indemnity to mitigate its  
damages against the vendors. The vendor remained a third party not before  
10 the court and she would have had a chance to explain their side of the story  
if any of the predecessors in title had been added. As it were, the quantum  
of loss is based on what the respondent spent. In the premises, I concur  
with the resolution of grounds 3 and 4 of the appeal by my learned sister  
Mwondha, JSC and I have nothing useful to add.

15 I further concur with the decision of my learned sister Mwondha, JSC that  
the appeal be dismissed with costs.

Dated at Kampala the <sup>th</sup> 12 day of January 2024

  
Christopher Madrama Izama

Justice of the Supreme Court